

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In The Matter of  
  
CLARK-BADER, INC. d/b/a  
TMC LONG DISTANCE,

Complainant,

v.

PACIFIC BELL,

Defendant.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYFEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYCC DOCKET NO. 93-161  
FILE NO. E-89-85

To: The Honorable Walter C. Miller  
Administrative Law Judge

JOINT PETITION FOR APPROVAL OF SETTLEMENT

Clark-Bader, Inc. d/b/a TMC Long Distance ("TMC"), and Pacific Bell ("PacBell") (jointly "Petitioners"), hereby jointly petition the Presiding Judge for approval of a settlement agreement which contemplates the dismissal with prejudice of the Formal Complaint filed against PacBell by TMC and the termination of this complaint proceeding. In support of this request, the following is shown.

1. This Section 208 proceeding has involved a complaint filed by TMC against PacBell arising out of PacBell's provision of access to the local telephone network in the San Diego LATA. The proceeding was designated for hearing by Hearing Designation Order adopted by the Acting Chief of the Common Carrier Bureau, DA 93-640, released June 23, 1993. The parties have filed

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numerous post-designation pleadings and have prepared their direct written exhibits, and the hearing is scheduled to commence on November 1 1993.

2. Approval of this settlement agreement, a summary of which is being presented to the Presiding Judge under separate cover, will serve the public interest in that it will remove and resolve the controversy between the Petitioners, thereby conserving the Commission's limited administrative and adjudicative resources. Declarations of representatives of both Petitioners, asserting that the settlement would, in their views, be in the public interest, are appended to this Joint Request.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the instant Petition be granted, the settlement agreement be approved, the Formal Complaint filed by TMC against

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PacBell be dismissed with prejudice, and this proceeding be terminated.

Respectfully submitted,

CLARK-BABER, INC. a/b/a  
THE LONG DISTANCE

By: 

Charles H. Hulsin  
Galland, Kharasch, Morse &  
Garfinkle, P.C.  
1054 31st Street, N.W.  
Washington, D.C. 20007-4492  
(202) 342-5200  
Its Attorneys

PACIFIC BELL

By: 

James E. Tuthill  
Nancy C. Woolf  
Pacific Bell  
140 New Montgomery Street  
Room 1523  
San Francisco, CA 94105  
(202) 542-7657  
Its Attorneys

Dated: October 7, 1993

DECLARATION

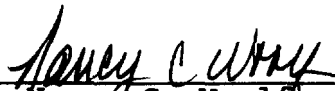
I, Nancy Woolf, hereby state and declare as follows:

1. I am attorney for Pacific Bell ("PacBell"). Clark-Bader, Inc. d/b/a TMC Long Distance ("TMC"), an interexchange long distance carrier, filed a Formal Complaint with the Federal Communications Commission against PacBell on February 27, 1989. This complaint (File No. E-89-85) was designated for hearing by the Federal Communications Commission in CC Docket No. 93-161.

2. PacBell has entered into a settlement agreement with TMC which agreement contemplates the dismissal with prejudice of TMC's Formal Complaint, the termination of this proceeding, and the receipt of a payment by TMC. The settlement agreement sets forth the complete agreement between the parties, and except as specifically set forth in this settlement agreement, PacBell has neither paid nor promised any consideration in connection with the dismissal of TMC's Formal Complaint.

3. Approval of the Settlement Agreement will promote the public interest by shortening lengthy and expensive proceedings before the Federal Communications Commission and the courts and by conserving the limited resources of the Commission and the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of October, 1993.

  
\_\_\_\_\_  
Nancy C. Woolf

### DECLARATION

I, Charles H. Helein, hereby state and declare as follows:

1. I am an attorney with the law firm of Galland, Kharasch, Morse & Garfinkle, and I and my associates have served as counsel to Clark-Bader, Inc. d/b/a TMC Long Distance ("TMC"), an interexchange long distance carrier, in connection with a Formal Complaint that was filed by TMC with the Federal Communications Commission against Pacific Bell ("PacBell") on February 27, 1989. This complaint (File No. E-89-85) was designated for hearing by the Federal Communications Commission in CC Docket No. 93-161. I have continually represented TMC throughout the preparation and prosecution of its complaint, and during that period, I have also been an attorney with the law firms of Dow, Lohnes & Albertson and Arter & Hadden.

2. TMC has entered into a settlement agreement with PacBell which agreement contemplates the dismissal with prejudice of TMC's Formal Complaint, the termination of this proceeding, and the receipt of a payment by TMC. The settlement agreement is, to my knowledge, the complete agreement between the parties, and except as specifically set forth in this settlement agreement, TMC has neither been paid, promised, nor received any consideration in connection with the dismissal of its Formal Complaint. In addition, I confirm that the amount of payment to be received by TMC does not exceed the amount reasonably and prudently incurred by TMC for

legal services in connection with the preparation, filing, and prosecution of the Formal Complaint before the FCC.

3. In my view, approval of the Settlement Agreement will promote the public interest by shortening lengthy and expensive proceedings before the Federal Communications Commission and the courts and by conserving the limited resources of the Commission and the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of October, 1993.



Charles H. Helein

CERTIFICATE OF SERVICE

I, Suzanne Helein, hereby certify that on this 8th day of October 1993, a true and correct copy of the foregoing "Joint Petition For Approval of Settlement" in CC Docket No. 93-161, was served on the following in the manner indicated:

Via Federal Express to: James P. Tuthill, Esquire  
Nancy C. Woolf, Esquire  
Pacific Bell Telephone Company  
140 New Montgomery Street  
Room 1530-A  
San Francisco, CA 94105

Via hand delivery to: Thomas D. Wyatt, Esquire  
Chief  
Formal Complaints and Investigation  
Branch  
Federal Communications Commission  
Room 107  
1250 23rd Street, N.W.  
Washington, D.C. 20554

The Honorable Walter C. Miller  
Administrative Law Judge  
Federal Communications Commission  
Room 213  
2000 L Street, N.W.  
Washington, D.C. 20036

  
Suzanne Helein